

ASSEMBLY BILL

No. 1340

**Introduced by Assembly Members Bonnie Lowenthal and V.
Manuel Perez**
(Coauthor: Senator Ducheny)

February 27, 2009

An act to amend Sections 3102, 3103, and 3103.5 of, and to add Section 3103.6 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1340, as introduced, Bonnie Lowenthal. Absentee voters.

Existing law provides that a special absentee voter who is temporarily living outside of the United States or is called for military service within the United States must return his or her ballot to the appropriate elections official by the close of the polls on election day to have that ballot counted.

This bill would give that special absentee voter 10 days after the election to return his or her ballot to the appropriate elections official and have it counted. The bill would make additional changes in special absentee voter provisions.

Because this bill would change the duties of elections officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3102 of the Elections Code, as amended
2 by Section 1 of Chapter 252 of the Statutes of 2008, is amended
3 to read:

4 3102. (a) Applications for the ballots of special absentee voters
5 shall be received and, except as provided in ~~Section~~ Sections 3103.5
6 ~~and 3103.6~~, the ballots shall be received and canvassed, at the
7 same time and under the same procedure as vote by mail ballots,
8 insofar as that procedure is not inconsistent with this chapter.

9 (b) This section shall remain in effect only until January 1, 2011,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2011, deletes or extends that date.

12 SEC. 2. Section 3102 of the Elections Code, as amended by
13 Section 2 of Chapter 252 of the Statutes of 2008, is amended to
14 read:

15 3102. (a) Applications for the ballots of special absentee voters
16 shall be received, and the ballots shall be received and canvassed
17 ~~at the same time and~~ under the same procedure as vote by mail
18 ballots, insofar as that procedure is not inconsistent with this
19 chapter.

20 (b) This section shall become operative January 1, 2011.

21 SEC. 3. Section 3103 of the Elections Code, as amended by
22 Section 3 of Chapter 252 of the Statutes of 2008, is amended to
23 read:

24 3103. (a) Any application made pursuant to this chapter that
25 is received by the elections official prior to the 60th day before
26 the election shall be kept and processed on or after the 60th day
27 before the election.

28 (b) The elections official shall immediately send the voter a
29 ballot in a form prescribed and provided by the Secretary of State.
30 The elections official shall send with the ballot a list of all
31 candidates who have qualified for the ballot by the 60th day before
32 the election and a list of all measures that are to be submitted to
33 the voters and on which the voter is qualified to vote. The voter
34 shall be entitled to write in the name of any specific candidate
35 seeking nomination or election to any office listed on the ballot.

1 (c) Notwithstanding Section 15341 or any other provision of
2 law, any name written upon a ballot for a particular office pursuant
3 to subdivision (b) shall be counted for the office or nomination,
4 providing the candidate whose name has been written on the ballot
5 has, as of the date of the election, qualified to have his or her name
6 placed on the ballot for the office, or has qualified as a write-in
7 candidate for the office.

8 (d) Except as provided in ~~Section~~ *Sections 3103.5 and 3103.6*,
9 the elections official shall receive and canvass special absentee
10 voter ballots described in this section under the same procedure
11 as vote by mail ballots, insofar as that procedure is not inconsistent
12 with this section.

13 (e) In the event that a voter executes a special absentee ballot
14 pursuant to this section and an application for a vote by mail ballot
15 pursuant to Section 3101, the elections official shall cancel the
16 voter's permanent vote by mail status, and process the application
17 in accordance with Chapter 1 (commencing with Section 3000).

18 (f) Notwithstanding any other provision of law, a special
19 absentee voter who qualifies pursuant to this section may, by
20 facsimile transmission, register to vote and apply for a special
21 absentee ballot or a vote by mail ballot. Upon request, the elections
22 official may send to the qualified special absentee voter either by
23 mail, facsimile, or electronic transmission the special absentee
24 ballot or, if available, a vote by mail ballot pursuant to Chapter 1
25 (commencing with Section 3000).

26 (g) This section shall remain in effect only until January 1, 2011,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2011, deletes or extends that date.

29 SEC. 4. Section 3103.5 of the Elections Code is amended to
30 read:

31 3103.5. (a) (1) A special absentee voter who is temporarily
32 living outside of the territorial limits of the United States or the
33 District of Columbia, or is called for military service within the
34 United States on or after the final date to make application for a
35 *special absentee ballot* or a vote by ~~absent voter~~ mail ballot, may
36 return his or her ballot by facsimile transmission. To be counted,
37 the ballot returned by facsimile transmission must be received by
38 the voter's elections official no later than the closing of the polls
39 on election day and must be accompanied by an identification
40 envelope containing all of the information required by Section

3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, _____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

My residence address is _____.
(Street Address) (City) (ZIP Code)

My current mailing address is _____.
(Street Address) (City) (ZIP Code)

My e-mail address is _____. My facsimile transmission number is _____.

I am a resident of _____ County, State of California, and I have not applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction for the same election.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this _____ day of _____, 20____.

(Signature) _____
voter (power of attorney cannot be accepted)

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED BY FACSIMILE TRANSMISSION.

1 (2) Notwithstanding the voter's waiver of the right to a secret
2 ballot, each elections official shall adopt appropriate procedures
3 to protect the secrecy of ballots returned by facsimile transmission.

4 (3) Upon receipt of a ballot returned by facsimile transmission,
5 the elections official shall determine the voter's eligibility to vote
6 by comparing the signature on the return information with the
7 signature on the voter's affidavit of registration. The ballot shall
8 be duplicated and all materials preserved according to procedures
9 set forth in this code.

10 (4) Notwithstanding paragraph (1), a special absentee voter who
11 is permitted to return his or her ballot by facsimile transmission
12 is, nonetheless, encouraged to return his or her ballot by mail or
13 in person if possible. A special absentee voter should return a ballot
14 by facsimile transmission only if doing so is necessary for the
15 ballot to be received before the close of polls on election day.

16 ~~(b) The Secretary of State shall make a recommendation to the~~
17 ~~Legislature, no later than December 31, 2008, on the benefits and~~
18 ~~problems, if any, derived from permitting qualified special absentee~~
19 ~~voters to return their ballots by facsimile transmission, and shall~~
20 ~~include in the recommendation the number of ballots returned by~~
21 ~~facsimile transmission pursuant to this section.~~

22 ~~(e)~~

23 (b) This section shall remain in effect only until January 1, 2011,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2011, deletes or extends that date.

26 SEC. 5. Section 3103.6 is added to the Elections Code, to read:

27 3103.6. A special absentee voter who is temporarily living
28 outside of the territorial limits of the United States or the District
29 of Columbia, or is called for military service within the United
30 States on or after the final date to make application for a vote by
31 mail ballot, may return his or her ballot by mail. To be counted,
32 the ballot shall meet both of the following criteria:

33 (1) Be postmarked on or before election day.

34 (2) Be received by the voter's county elections official on or
35 before the 10th day following the election.

36 SEC. 6. If the Commission on State Mandates determines that
37 this act contains costs mandated by the state, reimbursement to
38 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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